No. 88-192 and No. 88-325

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

MCKESSON CORPORATION,
Petitioner,

VS.

DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, DEPARTMENT OF BUSINESS REGULATION, and OFFICE OF THE COMPTROLLER, STATE OF FLORIDA,
Respondents.

On Writ of Certiorari to the Supreme Court of Florida

AMERICAN TRUCKING ASSOCIATIONS, INC., et al.,
Petitioner,

VS.

MAURICE SMITH, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT, et al.,
Respondents.

On Writ of Certiorari to the Supreme Court of Arkansas

AMICUS CURIAE BRIEF OF THE STATES OF CALIFORNIA, IDAHO, MONTANA, NORTH DAKOTA, TEXAS AND UTAH IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE

The State of California on behalf of the California Franchise Tax Board submits this brief pursuant to Rule 36 as amicus curiae in support of respondents the State of Florida and the State of Arkansas. Rule 36.4 provides that California is not required to obtain the consent of the parties to file an amicus curiae brief.

The following States join California in this brief: Idaho, Montana, North Dakota, Texas and Utah.

While the State of California recognizes the importance of these cases to Florida and Arkansas, the concern of amicus curiae California reaches far beyond the resolution of *McKesson* and *American Trucking Associations*. Both cases present the Court with the opportunity to speak directly to the larger issue of under what circumstances must a state that enacts a tax that is subsequently determined to be unconstitutional be required to refund the taxes collected. Resolution of this larger issue will, of necessity, require the Court to decide upon and articulate the standard by which it will be determined whether a decision striking down a state tax as unconstitutional will be applied prospectively or retroactively. Of the two cases, this issue is most clearly presented in *American Trucking Associations* where the Court must decide whether to apply its decision in *American Trucking Associations, Inc. v. Scheiner*, 107 S.Ct. 2829 (1987), prospectively only.

SUMMARY OF ARGUMENT

In *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), this Court established a three-pronged test for governing consideration of whether to impose a civil decision prospectively or retroactively. Statements in the briefs of amicus curiae for petitioners, notably the Committee On State Taxation (COST) and the Tax Executives Institute, Inc., (TEI) urge the Court to abandon the test established in *Chevron*. Instead, the Court is urged by COST and TEI to adopt new standards with respect to state tax statutes found to violate the Commerce Clause; specifically, those briefs urge the application of standards for criminal cases set forth in *Griffith v. Kentucky*, 479 U.S. 314 (1987).

Amicus California believes the *Chevron* standard is still valid and should be applied in these cases, as well as in all cases where state tax statutes are found to be unconstitutional. Amicus California respectfully urges the Court to seize upon this opportunity to reaffirm the validity of *Chevron*, and to elaborate upon the application of the *Chevron* standard to civil cases such as these which involve state taxes found to be unconstitutional. Amicus

California also urges the Court to find that the first prong of the *Chevron* test is not a "threshold" or indispensable prerequisite to a finding of prospectivity, and to find that *Chevron* requires a balancing of all three prongs. Amicus California also urges that special recognition be given under *Chevron* to the role of taxes as the "life-blood" of the states.

ARGUMENT

THE *CHEVRON* STANDARD CONTROLS THESE CASES

No absolute rule of retroactivity prevails in the area of constitutional adjudication. *Linkletter v. Walker*, 381 U.S. 618, 628-629 (1965). Indeed, the Constitution neither prohibits nor requires retroactive effect. *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 364 (1932). No "bright-line" rules have been articulated by the Court under which the retroactivity decision is made. However, in *Chevron Oil Company v. Huson*, 404 U.S. 97 (1971), this Court set forth three general factors when dealing with the nonretroactivity question outside the criminal area:

> "First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied [citations omitted] or by deciding an issue of first impression whose resolution was not clearly foreshadowed [citations omitted]. Second, it has been stressed that 'we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.' [citation omitted.] Finally, we have weighed the inequity imposed by retroactive application, for '[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity.'" [Citation omitted.] 404 U.S. at 106-107.

A. *Chevron* Should Not Be Abandoned In Favor Of The *Griffith* Standard For Retroactivity In Civil Tax Cases

The Court in *Chevron* held that a decision specifying the applicable state statute of limitations in another context should not be applied retroactively because the decision overruled clear Circuit precedent on which the complaining party was entitled to rely, because the new limitations period had been occasioned by a change in the substantive law the purpose of which could not be served by retroactivity, and because retroactive application would be inequitable. 404 U.S. at 107-109. *Chevron* did not directly address the question of when retroactive effect should be given to a ruling of unconstitutionality. Amici TEI and COST openly advocate a course which would have this Court abandon the *Chevron* test in favor of a new standard with respect to state tax statutes found to be unconstitutional. The new standard proposed by TEI and COST is the one set forth in *Griffith v. Kentucky*, 479 U.S. 314 (1987). There the Court held a "new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past." 479 U.S. at 328.

Amicus California urges that the *Chevron* standard should not be abandoned and specifically should be applied to civil tax cases which present constitutional issues. There is not the slightest hint in *Griffith* that the Court's newly enunciated standard for criminal cases applies to *civil* cases. Indeed, the *Griffith* opinion states in no uncertain terms that the area of civil retroactivity "continues to be governed by the standard announced in *Chevron Oil Co. v. Huson*." 479 U.S. at 322, n. 8. Moreover, *Griffith* relied heavily upon *United States v. Johnson*, 457 U.S. 537 (1982), in formulating this new standard of retroactivity in criminal cases. The *Johnson* opinion also affirmed the continued vitality of the *Chevron* standard for civil cases by pointing out that "all questions of civil retroactivity continue to be governed by the standard enunciated in *Chevron Oil Co. v. Huson*." 457 U.S. at 563.

Accordingly, the Court could not have been more clear in expressing in *Griffith* and *Johnson* its intention that a new standard was being created for criminal, but *not civil*, cases on the

issue of retroactive application. Nonetheless, while amicus TEI concedes that cases addressing the validity of discriminatory state tax statutes "do not involve considerations of the same magnitude as those presented in criminal procedures cases", it argues such cases "do implicate a constitutional right." Amicus TEI argues the presence of this constitutional right distinguishes these cases from the statute of limitations issue presented in *Chevron*. TEI Brief at 20. But TEI looks to a distinction without legal significance. Whether a constitutional right is in issue is *not* the focus of the retroactivity analysis. The issue, as it consistently has been addressed by the Court, is whether the issue involves a civil as opposed to a criminal case. *McKesson* and *American Trucking Associations* are indisputably civil cases. The fact these civil cases relate to constitutional issues is only one of a myriad of factors which the Court should examine and evaluate under the expansive parameters of the three factors discussed in *Chevron*.

Amicus COST argues the rationale of *Griffith* for abandoning the prospectivity doctrine in non-final criminal cases is as compelling in civil tax cases because "just as in criminal cases where substantial conceptual difficulties arose by not applying new rules retroactively, application of the prospectivity standards of *Chevron* has generated incompatible, unworkable rules and inconsistent principles which are often ignored at lower levels." COST Brief at 14. Exactly what these "incompatible, unworkable rules and inconsistent principles" are which COST claims warrant abandonment of the *Chevron* standard is not discussed by COST. Nor is it clear whether or why these problems exist only in the civil tax cases as opposed to all civil cases. COST apparently would have this Court categorically reject *Chevron* in all state tax cases, and perhaps even in all civil cases, as an expedient means of resolving what quite possibly are "problems" which exist only in COST's imagination.

The fact the Court has never before taken the opportunity to apply the *Chevron* factors to a civil tax case involving a violation of the Constitution has left some issues unresolved with respect to how those factors are to be applied. But clear guidance from the Court in these cases can resolve those open issues without taking

the draconian step of replacing the civil *Chevron* standard with the criminal *Griffith* standard.

B. The First *Chevron* Factor, That Of Whether A New Principle Of Law Is Established, Is Not A Threshold For Prospective Application

Under the first factor of *Chevron*, the decision to be applied nonretroactively should "establish a new principle of law, either by overruling clear past precedent on which litigants may have relied [citation omitted] or by deciding an issue of first impression whose resolution was not clearly foreshadowed. [citation omitted]." 404 U.S. at 106. Petitioners argue this first prong of *Chevron* is a threshold requirement for prospective application. McKesson Brief at 32, ATA Brief at 7. Amicus California disagrees, and urges the Court to interpret and clarify the *Chevron* test so as to require an examination and balancing of all three factors.

The Court has never held that the first factor of *Chevron* is a threshold requirement for prospectivity. In both *Chevron* and *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 88 (1982), the Court found all three *Chevron* factors militated against retroactivity, and thus did not specifically address the issue of what weight is to be given to any particular factor.[1] Amicus California urges the Court to adopt the view expressed by several Circuits that no single factor, including the

[1] Justice Stewart, author of the *Chevron* opinion, did state the issue of retroactivity "is not even presented unless the decision in question marks a sharp break in the web of the law" and "the issue is presented only when the decision overrules clear past precedent". *Milton v. Wainwright*, 407 U.S. 371, 381 n. 2 (1972) (Stewart, J., dissenting). However, *Milton* was a criminal (not civil) case, the majority did not address the retroactivity issue, and Justice Stewart did not even cite to *Chevron* in his dissent. Also, in *United States v. Johnson*, 457 U.S. 537, 550 n.12 (1982), Justice Blackmun stated in a footnote that in the civil context, the "clear break" principle has usually been stated as the threshold test for determining whether or not a decision should be applied nonretroactively. However, once again, the statement was made in the context of a criminal (not civil) case.

first prong of *Chevron*, is determinative on the retroactivity question. That view was succinctly summarized by the Tenth Circuit in *Jones v. Consolidated Freightways Corp.* (10th Cir. 1985), where the court explained the application of the *Chevron* standard as follows:

> "A proper assessment under *Chevron Oil* focuses upon the relative significance of the individual *Chevron* factors. It is not necessary that each factor compel prospective application. [Citations omitted]. While non-retroactivity generally depends upon the existence of past precedent, [citation omitted] 'the final determination involves pulling together the three factors for a careful balancing.' [Citation omitted.]" 776 F.2d at 1460, 1461.

Jones is consistent with the language of *Chevron* where the Court specifically stated that in cases dealing with the nonretroactivity question, it has "generally *considered three* separate factors", and concluded that "upon *consideration of each* of these factors" that prospective application was proper. *Chevron*, 404 U.S. at 106-107, emphasis added. Petitioners would interpret this language to mean that only where the first prong is satisfied would an examination under the second and third factors take place. Such an interpretation, however, is in direct conflict with the plain language of *Chevron* which speaks of considering not one, *but three*, factors. To interpret *Chevron* as petitioners do would nullify the need for a three-factor test and would relegate the important considerations of purpose and inequity, the second and third *Chevron* factors, to second class status, to be examined only if and when the Court has found under the first prong of *Chevron* that a new principle of law has been established.

Amicus California urges the Court not only to reject the "threshold" approach suggested by petitioners, but also to recognize that after considering and balancing all three factors, *non*retroactivity may be supported by a finding under *only one* of the three *Chevron* factors. Such an approach was followed by the First Circuit in *Fernandez v. Chardon*, 681 F.2d 42 (1st Cir. 1982), affirmed on other grounds, 462 U.S. 650 (1983), where the court found neither the first nor the second *Chevron* factors required nonretroactive application of the decision in issue. The

court in *Fernandez* then stated "[w]e might *still* find retroactivity barred if it would produce substantially inequitable results, the third *Chevron Oil* factor." 681 F.2d at 52 (emphasis added). Similarly, the Tenth Circuit in *Jones v. Consolidated Freightways Corp., supra*, 776 F.2d at 1460 remarked, "[a] proper assessment under *Chevron Oil* focuses upon the relative significance of the individual *Chevron* factors. It is not necessary that each factor compel prospective application."[2] The Eleventh Circuit reached the same conclusion in *Ackinclose v. Palm Beach County, Fla.*, 845 F.2d 931, (11th Cir. 1988), where the court stated, at page 935, "[i]n the final component of the *Chevron* analysis we are instructed that if retroactive application of a decision of the Court would produce substantial inequitable results, a holding of non-retroactivity is implied."[3] This approach followed by the First

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[2] Citing to *Mitchell v. City of Sapulpa*, 857 F.2d 713, 716 (10th Cir. 1988), petitioner McKesson states the Tenth Circuit is one of the federal Circuits which has "expressly viewed *Chevron's* first prong as a threshold test that must be met before the presumption of retroactivity can be overcome." McKesson Brief at 34, n.9. Amicus California disagrees with this statement. Page 716 of *Mitchell*, which is cited to by petitioner, discusses the applicability of the *Johnson* standard for retroactivity in criminal cases. The court at page 717 of *Mitchell* then concludes the *Chevron* (not *Johnson*) standard is to be applied, and goes on to examine each of the three *Chevron* factors. Nowhere in *Mitchell* does the Tenth Circuit state that the first prong of *Chevron* is a threshold test, and such a reading of *Mitchell* is inconsistent with *Jones*. While the Tenth Circuit in *Jones* did comment that nonretroactivity "generally" depends upon the existence of clear past precedent, *Jones* explicitly states the final determination involves "pulling together the three factors for a careful balancing," and explicitly states that it is not necessary for each factor to compel prospective application. 776 F.2d at 1460-1461.

[3] Citing to *Acoff v. Abston*, 762 F.2d 1543, 1548, n.6 (11th Cir. 1985) Petitioner McKesson stated the Eleventh Circuit is one of the federal Circuits which has "expressly viewed *Chevron's* first prong as a threshold test that must be met before the presumption of retroactivity can be overcome." McKesson Brief at 34, n.9. Amicus California disputes this statement. The footnote reference in *Acoff* clearly states the court is applying the *Johnson*, not *Chevron* standard, so any reference in *Acoff* to how the *Chevron* standard should be applied is dicta. That dicta is clearly inconsistent with the subsequent opinion of the Eleventh Circuit in *Ackinclose* which states that all three *Chevron* factors are relevant, and that it is "implied" from *Chevron* that a holding of non-retroactivity can be based solely upon a finding under the third prong of *Chevron* that retroactive application would produce substantial inequitable results. *Ackinclose*, 845 F.2d at 935.

Circuit in *Fernandez*, the Tenth Circuit in *Jones*, and the Eleventh Circuit in *Ackinclose* not only rejects the first prong of *Chevron* as a "threshold" test, but also recognizes, consistent with *Chevron*, that the prospectivity question requires an analysis of all three factors. Under this approach, which amicus California urges the Court to adopt, prospective application may be found proper upon a finding of a single *Chevron* factor.

C. The First Prong Of *Chevron* Should Be Liberally Interpreted In Favor Of A Finding Of A New Principle Of Law

The first prong of *Chevron* looks to whether the decision establishes a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed. *Chevron*, 404 U.S. at 106. Amicus California suggests that this prong should be read to militate against retroactive application, and in favor of prospective application, where the decision disapproves a practice this Court has arguably sanctioned in prior cases, or overturns a longstanding and widespread practice to which this Court has not spoken, but which a near-unanimous body of lower court authority has expressly approved. *United States v. Johnson, supra*, 457 U.S. at 551; *Solem v. Stumes*, 465 U.S. 638, 464 (1984); see e.g., *Gosa v. Mayden*, 413 U.S. 665, 673 (1973) (plurality opinion) (applying nonretroactively a decision that "effected a decisional change in attitude that had prevailed for many decades").

D. The Second Prong Of *Chevron* Should Be Read To Recognize That The Purpose Of The Commerce Clause Would Not Be Furthered By Retroactive Application In State Tax Cases

The second prong of *Chevron* requires an examination of "the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." 404 U.S. at 107. Petitioner McKesson argues the Florida Supreme Court's decision will further the Commerce Clause's "protections of the national common market only if the decision is retroactive." McKesson Brief at 37. Similarly, petitioner ATA argues retroactivity is necessary to encourage state officials "to heed the national interests in interstate free trade instead of provincial local concerns that favor in-state over out-of-state taxpayers." ATA Brief at 29. What is not made clear by either petitioner is why *prospective* application does not sufficiently further these goals.

This country had "its immediate origin in the necessities of commerce" and "the entire purpose for which the delegates first assembled at Annapolis was to devise means for the uniform regulation of trade." *Gibbons v. Ogden*, 22 U.S. 11 (9 Wheat), 6 L.Ed. 23, 26 (1824). It was this void which prompted Alexander Hamilton to point out that "[t]he want of a power to regulate commerce" was one of the defects of the Articles of Confederation. Hamilton, The Federalist No. 22. But retroactivity is not needed to achieve these goals of "a uniform and steady system" of commerce. *Gibbons*, Ibid. Prospective application of this Court's decisions in *Scheiner* (*supra*) 107 S.Ct. 2829, and *Baccus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984) will adequately preclude state enactments that unconstitutionally discriminate against interstate commerce. Whatever chill was imposed on interstate trade is in the past. *National Can Corp. v. Dept. of Revenue*, 749 P.2d 1286 (Wash. 1988), appeal dism'd & Cert. denied, 108 S.Ct. 2030 (1988). "The actual existence of a statute, prior to . . . [a determination of unconstitutionality] . . . is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration." *Chicot*

County Drainage District v. Baxter State Bank, 308 U.S. 371, 374 (1940).

Petitioner ATA argues that limiting *Scheiner* to prospective application would do nothing to remedy the unconstitutional discrimination against out-of-state taxpayers that has already occurred. ATA Brief at 24. But this will be the situation in every case, and ATA essentially asks this Court for nothing less than a rule which would require retroactivity in *all* state tax cases. Obviously such a rule would be totally inconsistent with the Court's approach in *Chevron* where a three-factor test was set forth for reviewing the retroactivity issue. ATA's argument nullifies the *Chevron* test.

Petitioners ATA and McKesson also assert that retroactive application is required in order to provide an incentive for states to not enact, or reenact, unconstitutional levies. ATA Brief at 27, McKesson Brief at 40. But once again, what petitioners ask for is a rule which would require retroactive application in *all* Commerce Clause state tax cases. Retroactive application might be appropriate where a taxpayer can demonstrate a course of conduct by a state or states which leads to the inescapable conclusion that nothing less than retroactive application will deter imposition of an unconstitutional levy. But it cannot be assumed that retroactive application is required because states, absent retroactive application, will not have any incentive to enact constitutional statutes. Indeed, petitioner McKesson admits, "[p]resumably, states usually do not intend for their tax legislation to violate the federal Constitution." McKesson Brief at 39. If it is assumed states do not intend for their tax legislation to violate the federal Constitution, then there is no need to require retroactive application to "encourage" states to enact constitutional statutes.

E. The Third Prong Of *Chevron*, Balancing The Equities, Should Recognize That Taxes Are The Life-Blood Of The States

Under the third *Chevron* factor, a court must weigh "the inequity imposed by retroactive application." 404 U.S. at 107. "Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our

cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity." *Cipriano v. City of Houma*, 395 U.S. 701, 706 (1969). The equities in state tax cases favor prospectivity.

The two cases currently before the Court inject into the third *Chevron* factor an additional element not found in civil cases in general. That additional element is the importance of taxes to the states. Taxes "are the life-blood" of government. *Bull v. United States*, 295 U.S. 247, 259 (1935); *Franchise Tax Board of California v. United States Postal Service*, 467 U.S. 512, 523 (1984). Taxes also occupy a special place in the area of judicial review. "In resolving constitutional challenges to state tax measures this Court has made it clear that 'in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.' [citations omitted.] Our review of tax classifications has generally been concomitantly narrow, therefore, to fit the broad discretion vested in the state legislatures." *Austin v. New Hampshire*, 420 U.S. 656, 661-662 (1975).

Amicus TEI argues that under a "properly framed inequity test", the examination should be whether "undue hardship" to the states, as opposed to "hardship", would result from retroactive application of a decision. TEI argues that under this analysis a different result obtains, for the "hardship" of which the states might complain is one of their own making, i.e., "the result of their own unconstitutional acts". TEI Brief at 15.

TEI's position finds no support in the law. Just as it would have produced "substantial inequitable results" in *Chevron* to have held the respondent therein "slept on his rights" at a time when he could not have known the time limitation that the law imposed upon him, so would it produce substantial inequitable results to hold in these cases that a state must return taxes collected at a time it could not have known the legal basis upon which it collected those taxes would at some later date be declared unconstitutional. TEI essentially advocates for a rule which looks to the burden upon the taxpayer and ignores the burden upon the state on the rationale that the state's burden is irrelevant to *Chevron's* equity analysis because such burden is of the state's own making. The "hardship" to Florida and Alabama is no more "the result of their own unconstitutional acts" than would be the

act of any party acting under color of a law later declared unconstitutional. The funds collected by a state under a tax enacted in good faith by its legislature to meet the growing burdens of state government are not for any private benefit or profit. They accrue to the public benefit for public purposes.

Statutory or even court made rules of law "are hard facts on which people must rely in making decisions and in shaping their conduct. This fact of legal life underpins our modern decisions recognizing a doctrine of nonretroactivity." *Lemon v. Kurtzman*, 411 U.S. 192, 199 (1973) (*Lemon II*). A consequence of this "fact of life" is that states rely upon statutory and court made rules of law in making decisions affecting revenue and, for this reason, financial hardship may result from retroactivity. The financial hardship to a state associated with retroactivity must be a major component of the *Chevron* equity analysis.

It is well established that a court may look to fiscal hardship and revenue effect when examining the retroactivity issue. In *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (*Lemon I*) the Court held on June 28, 1971 that a Pennsylvania statutory program to reimburse nonpublic sectarian schools for certain secular educational services violated the Establishment Clause of the First Amendment. In *Lemon II*, the Court permitted Pennsylvania to reimburse nonpublic sectarian schools for services provided before June 28, 1971 when *Lemon I* was decided. 411 U.S. at 193-209. The Court in *Lemon II* recognized that the expenses incurred by the schools "in reliance on the state statute inviting the contract made and authorizing reimbursement for past services performed by the schools" offset "the remote possibility of constitutional harm" which would result from permitting Pennsylvania to keep its bargain with the schools. 411 U.S. at 203. The Court recognized in *Lemon II* that to deny the church-related schools any reimbursement for their services "would impose upon them a substantial burden which would be difficult for them to meet." 411 U.S. at 204.

Thus, the protection of fiscal interests is clearly a major consideration in any retroactivity analysis. See also *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702, 722 (1978) ("Retroactive liability could be devastating for a pension

fund."); *Florida v. Long*, 487 U.S. ____ (1988), 108 S.Ct. 2354, 2361-2363; *Camden I. Condominium Ass'n Inc. v. Dunkle*, 805 F.2d 1532, 1535 (11th Cir. 1986), cert. den. 107 S.Ct. 3266 (1987) ("the risk of insolvency for local governments, the risk of deep cuts in government services necessary to innocent citizens, and the risk of overtaxing innocent taxpayers are critical inquiries in this case.") This fiscal consideration is of paramount importance when the retroactivity issue involves state taxes, the state's "life-blood", which are collected and spent and then subsequently found to be unconstitutional.

CONCLUSION

For the reasons stated, this Court should reaffirm the validity of *Chevron*, and elaborate upon the application of the *Chevron* standard to civil cases which involve state taxes found to be unconstitutional.

DATED: February 21, 1989

Respectfully submitted,

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